IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.S.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 1ST JANUARY 2007 / 11TH POUSHA 1928

MFA.No. 442 of 2000(A)

OPMV.1534/1994 of MOTOR ACCIDENT CLAIMS TRIBUNAL, PERUMBAVOOR
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APPELLANT: PETITIONER

RAJESH, AGED 25, S/o SUKUMARAN, MAMPILAYIL HOUSE,
KALADY P.O. MANJAPRA, ALUVA TALUK, ERNAKULAM DISTRICT

BY ADV. SMT.AYSHA YOUSEFF
SRI.V.K.SIDHIQUE
SMT.SAJITHA SIDHIK

RESPONDENTS:RESPONDENTS
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1. P.K. UNNI, S/o KESAVAN NAIR, PUTHUSSERYB HOUSE,
MANJAPRA, ALUVA TALUK, ERNAKULAM DISTRICT
2. THE ORIENTAL INSURANCE COMPANY LTD,
ANGAMALY BRANCH, ANGAMALY, ERNAKULAM DISTRICT

R2 BY ADV. SRI.VPK.PANICKER

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 01/01/2007, THE COURT ON 01/01/2007 DELIVERED THE FOLLOWING:

K.S. RADHAKRISHNAN & M.N. KRISHNAN, JJ.

M.F.A. No 442 of 2000

Dated: 1st January 2007

JUDGMENT

Krishnan,J.

This appeal is preferred against the award of the Claims Tribunal, Perumbavoor in O.P.(M.V) No 1534 of 1994. Claimant, a coolie by profession aged 19 years at the time of accident sustained fracture of both legs and pelvis and had undergone prolonged treatment and the Tribunal awarded total compensation of Rs 73,400/-. It is against that decision the present appeal is preferred.

2. Wound certificate would reveal that the claimant had sustained fracture of the pubic rami, fracture of pelvis, communited fracture on both legs and dislocation besides lacerated wounds over the shoulder, upper arm, abdomen, upper eyelid etc. He was inpatient in the hospital for about 48 days. Tribunal took his income at Rs 1,000/- and awarded Rs 8,000/- under the head of actual loss of earning. Considering the nature of profession as coolie it is desirable to fix the income at Rs 1,500/- per month and so a further amount of Rs 4,000/- has to be granted towards actual loss of

earning. Along with the appeal, the claimant had produced a disability certificate and it is styled as certificate for physically handicapped person. As per the certificate of the Medical Board, the claimant had post-trauma stiffness and ankylosis of left ankle and stiffness of right hip and certified it as 40% disability and styled it as moderate category. It is evident that the certificate was issued for the purpose of physically handicapped person to get the benefits and it had not considered the real permanent disability which would have on a person on sustaining the above injuries. So we are not inclined to fix the disability at 40% for the reason that even for the case of amputation under the Workmen's Compensation Act permanent disability is only 40%. The disability sustained herein is only stiffness and ankylosis of the left ankle and right hip. But considering the fact that he had sustained fractures on both the legs and fracture of pelvis we are inclined to take 15% as the disability to calculate the compensation. When the income is estimated at Rs 1,500/- per month and disability at 15% and if the multiplier of 16 is applied the total permanent disability compensation would come to Rs 43,200/-. Out of which the Tribunal has awarded only Rs 5,000/-. So we award an additional amount of Rs 38,200/- under that head.

He had undergone treatment as inpatient on different occasions for a period of 48 days. We feel he was suffering from excrutiating pain and therefore we enhance the compensation for pain and suffereing from Rs 15,000/- to Rs 20,000/-, awarding an additional amount of Rs 5,000/-. Fracture of both legs, fracture pelvis etc. would certainly affect his life especially when he is very young. Therefore for loss of amenities and enjoyment in life we enhance the amount by Rs 5,000/-. The Tribunal has pointed out that the claimant was in hospital for 48 days and he had fracture of both the legs. Thus the claimant would have required the assistance of a bystander and for the expenses of bystander we allow Rs 5,000/-. Thus the claimant is entitled to additional compensation of Rs 57,200/-. Therefore the appeal is partly allowed and the claimant is awarded an additional compensation of Rs 57,200/- with 7% interest on the said sum from the date of petition till realisation and the Insurance Company is directed to deposit the amount within two months from the date of judgment.

SD/- K.S. RADHAKRISHNAN, JUDGE

SD/- M.N. KRISHNAN, JUDGE

01/01/2007 (true copy)

(K.S. RADHAKRISHNAN, JUDGE)

(M.N. KRISHNAN, JUDGE)

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